

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON, A MUNICIPAL CORPORATION, BED BATH & BEYOND INC., A NEW YORK CORPORATION, - AND RETAIL DEVELOPMENT WEST, LLC, A DELAWARE LLC

This Agreement is made as of the date last written below by and between the City of Stockton, a municipal corporation (the "City") and Bed Bath & Beyond Inc., a New York corporation ("BBBY"), and Retail Development West, LLC, a Delaware LLC ("Facilitator"), hereinafter collectively referred to individually as "party" and collectively as "Parties" herein, with reference to the following facts, purposes, and understandings.

RECITALS

- A. Capitalized terms used herein are defined in Article 1 of this Agreement.
- B. The City has adopted an Economic Development Strategy which includes efforts to generate new revenue, attract new business, and create additional jobs throughout Stockton.
- C. The Office and Industrial Sales Tax Incentive Program will serve as an additional tool in the City's economic development efforts by providing financial incentives to eligible businesses that are looking to locate in office or industrial facilities within Stockton city limits.
- D. The Office and Industrial Sales Tax Incentive Program will be used to attract and retain businesses meeting the following criteria:
1. Generate net new annual gross taxable sales of \$25 million or more.
 2. Generate sales tax to the City of Stockton corresponding with the gross sales tax amount.
 3. Create or retain a minimum of 10 full-time equivalent (FTE) jobs. For this purpose, jobs shall include jobs currently existing in Stockton by BBBY, any of its affiliates, or any affiliate to be created.
 4. Make or retain a capital investment within the City of \$50,000 (for example, an office lease rate of \$10/s.f./year for 5,000 s.f. building would be \$50,000, or lease rate of 20,000 s.f. industrial building at \$4.50/s.f./year would be \$90,000) or more (may be an aggregate of lease or purchase of facility, tenant improvements, off-site improvements, or other similar investment).
 5. Must have a physical presence within Stockton city limits.
- E. In order to be eligible for the incentive, the City must demonstrate that there is a direct benefit to the public, which may include but is not limited to the following:
1. Net new sales tax revenue received by the City of Stockton
 2. Creation or retention of jobs
 3. Capital Investment by the business
- F. BBBY is a company headquartered at 650 Liberty Avenue, Union, New Jersey 07083, which is in the business of selling domestic merchandise and home furnishings.

G. In consideration for the City entering into this Agreement, BBY, directly or through a newly created subsidiary, will establish its headquarters for its California business for the completion and release of electronic orders to California customers at 3610 South Airport Way, Stockton, CA 95206 and/or 1735 Zephyr Street, Stockton, CA 95206 (the "Business").

H. BBY shall use commercially reasonable, good faith efforts within business constraints to administer its business activities within reason, as determined by BBY's sole and absolute discretion, with the objective of maximizing the amount of Local Sales Tax Revenues generated from the Business within the City of Stockton.

I. The operations of the Business to be located within the City, will provide significant public benefit to the City, in that the additional Local Sales Tax Revenues to be generated as a result of BBY's efforts represent a substantial source of additional public revenue for the City.

J. This Agreement will facilitate a business-friendly environment that will allow BBY to operate a successful business.

K. The City represents and warrants that it is a municipal corporation duly formed, existing, and operating under the laws of the State of California and exercising all governmental functions and rights thereto as a Charter City. The City further represents that entering into this Agreement and the performance of the City's obligations thereunder do not constitute a violation of any state or federal statute or judicial decision to which the city is subject. The City also represents that there are no pending lawsuits which would prevent or impair the timely performance of the City's obligations under this Agreement. The City acknowledges that these representations and warranties are a material consideration to BBY and that BBY is relying on these representations in undertaking BBY's obligations as set forth herein.

L. BBY represents and warrants that it is a corporation duly formed, existing and operating under the laws of the State of New York. BBY further represents that entering into this Agreement and the performance of its obligations thereunder do not constitute a violation of any state or federal statute or judicial decision to which it is subject. BBY also represents that there are no pending lawsuits which would prevent or impair the timely performance of BBY's obligations under this Agreement. BBY acknowledges that these representations and warranties are a material consideration to the City and that the City is relying on these representations in undertaking the City's obligations as set forth herein.

M. Facilitator represents and warrants that it is a limited liability company duly formed and existing under the laws of the State of Delaware. Facilitator further represents that entering into this Agreement and the performance of its obligations thereunder do not constitute a violation of any state or federal statute or judicial decision to which it is subject. Facilitator also represents that there are no pending lawsuits which would prevent or impair the timely performance of Facilitator's obligations under this Agreement. Facilitator acknowledges that these representations and warranties are a material consideration to the City and that the City is relying on these representations in undertaking the City's obligations as set forth herein.

N. The proposed Office and Industrial Sales Tax Program may foster a growing ecosystem of businesses within the City, thereby promoting business-to-business sales taxes and other similar financial benefits to the City.

O. Due to the benefits of locating the Business in the City as described herein, the Parties propose to enter into this Agreement as reinforcement of their mutually beneficial relationship by establishing an incentive program that will rebate to BBBY a portion of the Sales Tax generated by BBBY's business activities within the City.

P. The City Council has found that the Rebates and other benefits provided BBBY under this Agreement will advance the public welfare and provide adequate consideration in return to the City as follows:

1. The net financial benefit to the public has the potential to exceed the value of the Rebates provided to BBBY;

2. BBBY will provide a direct public benefit through the provision of jobs; the generation of sales and/or property taxes; and the provision of other benefits to the City and the San Joaquin County region;

3. The Rebates represent a partial return of the total Sales Taxes that will be realized by BBBY locating its Business in the City of Stockton, which shall be paid in arrears, such that the Rebates will not impact the City's current General Fund balance as the Rebates will be based on future, additional revenues to the General Fund; and

4. Rebating a larger percentage of the Sales Tax for higher amounts of Net New Sales Tax Revenue will benefit the public by incentivizing the location of the Business in Stockton.

Q. The Parties now wish to enter into this Agreement setting forth the Parties' understanding and agreement regarding the establishment of BBBY's Business in the City of Stockton.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, representations and promises herein contained, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. In addition to the capitalized words and phrases that may be elsewhere defined in this Agreement, the following capitalized words and phrases shall have the following meanings under this Agreement:

(a) "Agreement" means this Agreement by and Between the City of Stockton and BBBY for the Establishment of its Business within the City of Stockton.

(b) "Applicable Reporting Period" means, for purposes of determining the Parties' financial obligations hereunder, the Reporting Period applicable to the Fiscal Year for which the financial obligation is being calculated.

(c) "Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California or City are closed.

(d) "City" means the City of Stockton, a municipal corporation organized under the laws of the State of California and all of its agents, successors and assigns.

(e) "Contract Year" means the first full year commencing with the first day of the calendar year following the Execution Date of this Agreement.

(f) "Effective Date" means the date of execution of this Agreement, which is the date of the last signature below.

(g) "Event of Default" means any default by BBBY or The City as provided in Section 5.2, below.

(h) "Party" means either the City or BBBY, sometimes collectively referred to as the "Parties".

(i) "BBBY" means Bed Bath & Beyond, Inc., a New York corporation and its subsidiaries, successors, assigns and any subsequently formed LLC's created for the purpose of conducting the Business.

(j) "Rebates" means the Sales Tax Rebate Payment.

(k) "Retail Sales" means the sale of all tangible personal property to any person or entity, which is subject to the Sales Tax Law and which generates Local Sales Tax Revenues.

(l) "Sales Tax" or "Sales Taxes" means the Bradley-Burns portion of the sales and use taxes remitted by BBBY to the State of California arising from BBBY's Stockton operation pursuant to the Sales and Use Tax Law of the State of California.

(m) "Sales Tax Payment Report" means the periodic reports filed by BBBY with the California Board of Equalization to report and remit BBBY's sales and use taxes due.

(n) "Sales Tax Rebate Payment" means the payments to BBBY and Facilitator by the City pursuant to Section 2.1 of this Agreement.

(o) "Sales Tax Rebate Percentage" shall mean the percentage in the table set forth in Subsection 2.1(c), below.

(p) "Sales Tax Received" means the Sales Tax ultimately received by the City (through remittance from the State of California).

(q) "Sales Tax Received Report" means the quarterly report received by the City by its sales tax consultant, which provides information from the California Board of Equalization that verifies the total amount of Sales Tax received. Such report is prepared in arrears of Sales Taxes paid by BBBY.

(r) "Term" means the term of this Agreement, commencing on the Effective Date of this Agreement and ending on the tenth (10th) anniversary of the first day of the first Contract Year, together with any extension period as provided by Section 2.2, below, or as otherwise agreed to by the Parties in a written amendment to this Agreement.

ARTICLE 2

SALES TAX REBATE

2.1 Sales Tax Rebate. Subject to the terms and conditions of this Agreement, the City shall rebate to BBBY and Facilitator a portion of the Sales Taxes based on the amount of net new Sales Taxes Received by the City and disbursed annually to BBBY and Facilitator, as set forth below. The Sales Tax Rebate is limited to the Bradley-Burns 1% tax only.

(a) Sales Tax Rebate Payment Amount. The amount of the "Sales Tax Rebate Payment" shall be equal to (i) the Sales Tax Received (as calculated below) multiplied by (ii) the Sales Tax Rebate Percentage (as determined below).

(b) Determination of Sales Tax Received. Following the filing of the last Sales Tax Payment Report for a fiscal year, BBBY shall remit to City a copy of all Sales Tax Payment Reports for the fiscal year (the "Fiscal Year Sales Tax Payment Reports"). Upon receipt of each Sales Tax Payment Report and the Sales Tax Received Report, City shall determine the Sales Tax Received. Fiscal Year refers to the annual period beginning July 1 and ending June 30.

(c) Determination of Sales Tax Rebate Percentage. The "Sales Tax Rebate Percentage" shall mean the percentage set forth in table below.

Net New Sales Tax Revenue	% of Sales Tax Revenue Paid to BBBY and Facilitator	% of Sales Tax Revenue Retained by City
Less than \$250,000	0%	100%
\$250,000-\$500,000	50%	50%
Above \$500,000	65%	35%

To be clear, once the Net New Sales Tax Revenue equals \$250,000, the Sales Tax Rebate Percentage will be 50% on all Net New Sales Tax Revenue up to \$500,000. Once the Net New Sales Tax Revenue equals or exceeds \$500,000, the Sales Tax Rebate Percentage will be 65% on all Net New Sales Tax Revenue. For example, if the Net New Sales Tax Revenue for a fiscal year is \$700,000, the percent of Sales Tax Revenue paid to BBBY and Facilitator will be 65% on the full \$700,000, which would result in a \$455,000 rebate for that fiscal year.

(d) Payment Timing. Sales Tax Rebates shall be paid on an annual basis. Within thirty (30) days after receipt of the Sales Tax Payment Report and the Sales Tax Received Report for the final quarter of the fiscal year, the City shall rebate to BBBY by check or wire

transfer 92.3% of the Sales Tax Rebate Payment applicable for the fiscal year and provide a written accounting to BBBY showing the calculation thereof, including the amount of Sales Taxes received per the Sales Tax Received Report and a reconciliation thereof to the Quarterly Sales Tax Reports. The City shall pay Facilitator 7.7% of the Sales Tax Rebate Payment by check or wire transfer applicable for the fiscal year and provide a written accounting to Facilitator including the amount of Sales Taxes received per the Sales Tax Received Report and a reconciliation thereof to the Quarterly Sales Tax Reports. In the event of a conflict between the Sales Tax Received Report and the Quarterly Sales Tax Reports, City will inquire with the California Board of Equalization regarding the conflict to try to resolve the conflict, however, if the conflict cannot be resolved with reasonable efforts by the City, City will advise BBBY and Facilitator in writing of the conflict and BBBY and Facilitator shall take all available steps to resolve the conflict between the two (2) reports. Any adjustment to the amount due shall be made on the next Sales Tax Rebate Payment.

(e) Audits. Either Party shall, upon no less than thirty (30) days prior written notice to the other, make the entirety of its books and records relating to the calculation and determination of the Sales Tax Rebate Payment, available at no cost to the requesting party and/or its designees and shall direct its accountants, consultants and contractors in possession of its books to do likewise. Each party shall bear the costs of its own auditors, experts, and any other consultants it may engage to complete its audit.

(f) Adjustments: Dispute Resolution. If following a Sales Tax Rebate Payment, the City determines that an adjustment is needed to correct an erroneous allocation, including a determination by the Board of Equalization (BOE) that all or a portion of the sales tax revenue received was improperly allocated, the City shall inform BBBY in writing of the amount and basis for the adjustment, and such adjustment shall be applied to the next Sales Tax Rebate Payment, provided that BBBY does not object in writing to the adjustment. If the amount of the next Sales Tax Rebate Payment is insufficient to cover the amount of the adjustment, the City shall notify BBBY and Facilitator in writing and BBBY and Facilitator shall pay their respective share of the remaining amount owed to the City within thirty (30) days of receiving the City's written notification. If following a Sales Tax Rebate Payment, BBBY and Facilitator determine that the payment is incorrect and BBBY and Facilitator are owed more, BBBY and/or Facilitator shall inform the City in writing of the amount and basis for the adjustment, and such adjustment and outstanding balance shall be paid to BBBY and/or Facilitator within thirty (30) days from the date of notice, provided that the City does not object in writing to the adjustment.

If either party objects to the amount of the adjustment, then the Parties will meet and confer within thirty (30) days thereafter in an attempt to resolve the dispute. If the dispute is not resolved within thirty (30) days after the meet and confer, then either Party may request the matter to be resolved by an independent accounting firm mutually agreeable to both Parties. Such engagement shall be by both Parties and shall be limited to calculating the Sales Tax Rebate Payment in accordance with the terms of this Agreement. The fees and expenses of the accounting firm used in such dispute resolution shall be divided between BBBY, Facilitator and the City in proportion to the degree to which the disputed amount of the Sales Tax Rebate Payment was resolved in each Party's favor.

For illustration purposes only, if BBBY's calculation of the Sales Tax Rebate Payment was

\$100,000, and the City's calculation of the Sales Tax Rebate Payment was \$80,000, and the dispute resolution process determines the Sales Tax Rebate Payment should have been

\$90,000, then BBY and Facilitator, on the one hand, and City shall bear the accounting fees and expenses equally.

Any adjustments to amounts previously paid or to settle fees and expenses shall be applied to the next due Sales Tax Rebate Payment. If no such payment is expected within ninety (90) days, then settlement shall be made by separate payment by the owing Party. For the avoidance of doubt, each Party will bear its own legal fees and costs, if any, associated with the audit or any audit dispute resolution.

2.2 Term Extension. The Term of this Agreement shall be for ten (10) years from the date the Agreement becomes effective and will be automatically extended for two additional five (5)-year periods, for a total of twenty (20) years if so extended subject to Section 4.4 below. In addition, either party may cancel either 5-year automatic renewal by 60 days written notice to the other party.

2.3 Disclaimer as to Sales Tax Revenue. Each Party understands and acknowledges that the other Party makes no warranty, representation, covenant, or guaranty, regarding the amount of Sales Tax revenues that may be generated by BBY's operations in any year. Specifically, but without limiting the foregoing, acknowledges that the City has informed BBY that the State of California (acting through the State Legislature or any other State agency having jurisdiction) may revise the manner in which Sales Tax revenues are allocated among cities and counties and other agencies in the State or may reduce or eliminate the Sales Tax rate applicable in the State. Based on the foregoing, BBY understands and acknowledges that BBY bears the sole risk that City's Sales Tax revenues generated by BBY's operations may be reduced or no longer available to the City due to the actions of the State, which could reduce or eliminate the Sales Tax Payments to BBY. Notwithstanding the foregoing, in the event of a change in the Sales and Use Tax Law that impacts the manner in which Sales Tax is collected and distributed to the City, this Agreement shall be interpreted so as to adjust its provisions to apply the revised Sales and Use Tax Law in the manner most consistent with the Agreement's intent which is to rebate to BBY the Sales Tax Rebate Percentage of the Sales Taxes remitted by BBY that are ultimately included in the City's revenues.

ARTICLE 3

CONTINUING OBLIGATIONS

3.1 Point of Sale. As consideration for the City making the Rebates to BBY under this Agreement, BBY covenants to establish its Business in Stockton such that the City receives the Sales Tax Revenue relating to the Business. The Business includes sales related to BBY's internet and call order business but not sales which are sales of individual physical retail store locations. For the avoidance of doubt, BBY may establish other locations at which to market and sell its products but shall not accept any incentives from other governmental entities within California to establish such other locations in violation of California Government Code Section 53084 or 53084.5

3.2 Community Support. BBY acknowledges the importance of BBY's participation in and support for local organizations, businesses, and community events and may, in its discretion, support or participate in such organizations and events.

3.3 Indemnity.

(a) BBY shall indemnify, defend, and hold the City and its officials, employees, agents, volunteers, and successors (the "Indemnified Parties") harmless against any legal or administrative proceedings, arbitrations, or enforcement actions commenced by a third party or parties for damages, compensation, fines, penalties or other amounts arising out of (i) a breach by BBY of this Agreement, (ii) any violation of law by BBY in performance of this Agreement or (iii) an allegation that BBY's entering into or performance of this Agreement constitutes a violation of California Government Code Section 53084 or 53084.5.

(b) BBY's obligation to indemnify, defend, and hold harmless the Indemnified Parties under this Section 3.3 is subject to the City: (i) promptly notifying BBY of the initiation of any such claim, action, or proceeding (unless BBY is already aware of the claim, action, or proceeding), and (ii) giving BBY the full authority to defend and settle such claim, action, or proceeding at BBY's expense. The City shall reasonably cooperate with BBY in the defense of such claim, action, or proceeding and may be represented, at the City's option and expense, by counsel of the City's selection. The City's duty under this Subsection (b) to cooperate with BBY does not include contributing to or sharing in the cost of such defense.

(c) Notwithstanding anything to the contrary, BBY's obligations related to the Indemnified Parties shall not apply to any claim or action to the extent arising from the Indemnified Parties' negligence, gross negligence or willful misconduct.

ARTICLE 4

ASSIGNMENTS

4.1 Assignments. Except as otherwise provided in Section 4.2, below, BBY may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. The City's consent to an assignment by BBY may be provided by the City's City Manager. Any unpermitted assignment, or any attempt thereof, shall not confer rights upon the purported assignee and shall constitute an immediate material default of this Agreement and City may, only after providing BBY written notice – and an opportunity to cure as set forth below in Section 5.2(b)[Default by BBY], terminate this Agreement.

4.2 Sale or Assignment by BBY. Section 4.1 notwithstanding, the City's consent shall not be required for any assignment by BBY: (i) in connection with the sale of all or substantially all of its business operations in Stockton provided that the acquirer agrees to perform and observe, from and after the date of the sale, the obligations, terms and conditions of this Agreement (provided, however, such acquirer shall not be liable for the failure of its predecessor to perform any such obligation); or (ii) to an affiliate of BBY in connection with a corporate restructuring or other reorganization, including any entity created for the purpose of administering this Agreement.

4.3 Breach. In the event of a breach of this Article 4, the sole remedy of the other Party shall be to terminate this Agreement by written notice to the other within thirty (30) days after becoming aware of the breach (in which event it is understood that BBY's indemnification obligations in Section 3.3 shall survive such termination).

4.4 Termination. Regardless of anything contained herein to the contrary, BBY shall have the right to terminate this Agreement, with or without cause, upon 160 days written notice and the indemnification obligations shall survive such termination.

ARTICLE 5

DEFAULT AND REMEDIES

5.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

5.2 Default by City.

(a) City Event of Default. If, after providing the notice and opportunity to cure as provided in Subsection (b) below, the City is in breach of any material provision of this Agreement, such breach shall constitute a "City Event of Default" and a basis for BBY to take action against the City if left uncured by the City pursuant to Subsection (b) of this Section 5.2.

(b) Notice and Cure Procedure: Remedies. Upon the occurrence of a breach of any material provision of this Agreement by the City, BBY shall first notify the City in writing of the purported breach, giving the City thirty (30) days from receipt of such notice to cure the breach. In the event the City does not cure the breach within such thirty (30)-day period (or, if the breach is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period or fails thereafter to diligently prosecute the cure to completion), then BBY shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating this Agreement by written notice of termination to the City; (ii) prosecuting an action for damages (excluding punitive damages and consequential damages); or (iii) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages).

Default by BBY.

(a) BBY Event of Default. If after providing the notice and opportunity to cure as provided in Subsection (b) below, BBY is in breach of any material provision of this Agreement, such breach shall constitute a "BBY Event of Default" and a basis for the City to take action against BBY if left uncured by BBY pursuant to Subsection (b) of this Subsection

(b) Notice and Cure Procedure: Remedies. Upon the occurrence of breach of any material provision of this Agreement by BBY, the City shall first notify BBY in writing of the purported breach, giving BBY thirty (30) days from receipt of such notice to cure the breach. In the event BBY does not cure the breach within such thirty (30)-day period (or if the breach is not reasonably susceptible of being cured within such thirty (30)-day period, BBY fails to commence the cure within such period or fails thereafter to diligently prosecute the cure to

completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating this Agreement by written notice of termination to BBY; (ii) prosecuting an action for damages (excluding punitive damages and consequential damages); or (iii) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages).

5.3 Rights and Remedies Cumulative; Waiver of Default. Except as otherwise expressly provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same breach or of any other breach. No waiver with respect to any breach or default in the performance of any obligation under the terms of this Agreement shall be deemed to be a waiver with respect to any subsequent breach or default, whether of similar or different nature. Any waiver, permit, consent or approval of any kind or character shall be effective only if made in writing and only to the extent specifically set forth in such writing.

5.4 Limitation on Liability. NEITHER PARTY SHALL BE LIABLE HEREUNDER FOR ANY LOSS OF PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES ARISING HEREUNDER, HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE 6

GENERAL PROVISIONS

6.1 Identity of BBY. BBY represents and warrants to the City as of the execution date of this Agreement, as follows:

(a) Organization. BBY is a corporation, duly organized, validly existing and in good standing under the laws of the State of New York, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) No Conflict. The execution, delivery and performance of this Agreement by BBY does not and will not conflict with, or constitute a material violation or material breach of, or constitute a material default under: (i) the organizational documents of BBY; (ii) to BBY's knowledge, any applicable law, rule or regulation binding upon or applicable to BBY; or (iii) any other material agreements to which BBY is a party.

(c) No Litigation. Unless otherwise disclosed in writing to the City, there is no existing or, to BBY's knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting BBY and its Business activities that would, if adversely determined, materially and adversely affect BBY's ability to perform its obligations under this Agreement.

6.2 Identity of Facilitator

(a) Organization. Retail Development West, LLC, is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware,

with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) No Conflict. The execution, delivery and performance of this Agreement by Facilitator does not and will not conflict with, or constitute a material violation or material breach of, or constitute a material default under: (i) the organizational documents of Facilitator; (ii) any applicable law, rule or regulation binding upon or applicable to Facilitator; or (iii) any other material agreements to which Facilitator is a party.

(c) No Litigation. Unless otherwise disclosed in writing to the City, there is no existing or, to Facilitator's knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Facilitator and its business activities that would, if adversely determined, materially and adversely affect Facilitator's ability to perform its obligations under this Agreement.

6.3 Source of Sales Tax Rebate Payment. Sales Tax Rebate payments shall be payable from any source of legally available funds of the City.

6.4 Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, certified mail, to the respective parties as follows:

City: City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Attention: City Manager

With copy to: Office of City Attorney
425 N. El Dorado Street
Stockton, CA 95202

BBBY: 650 Liberty Ave.
Union, New Jersey 07083

With copy to: Bed, Bath, and Beyond Inc.
Tax Department
650 Liberty Ave.
Union, New Jersey 07083

Facilitator: Retail Development West, LLC
Charles F. Barnwell, Jr
3475 Lenox Road, Suite 650
Atlanta, GA 30326

Notice shall be deemed effective on the date personally delivered or, if mailed, on the date listed on the return receipt.

6.5 Non-Liability of Officials, Employees and Agents. No member, official, officer, director,

employee or agent of any Party shall be personally liable to the other Party, or any successor in interest, for: (i) any default or breach of this Agreement, (ii) any amount that may become due under this Agreement, or (iii) any obligation required under this Agreement.

6.6 Enforced Delay. In addition to the specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; moratoria, or other restrictions imposed by governmental entities other than City; freight embargoes; the filing of a lawsuit or action challenging the entitlements or environmental review for the project contemplated hereunder, this Agreement, or BBBY or the City's authority to perform their respective obligations hereunder (which shall be deemed to be a delay of the Parties); or any other similar causes (not including the lack of funds) beyond the control of and without the fault of the Party claiming the inability to perform. An extension of time for any such cause of delay will be deemed granted if notice by the Party claiming the delay is sent to the other within thirty (30) days from the commencement of the cause causing the delay. In no event, however, shall the cumulative delays exceed twelve (12) months, unless otherwise agreed to by the Parties in writing. Where the default is due to a Party's failure or delay in making a payment, such Party shall promptly make the payment following the resolution or termination of the event causing the delay.

6.7 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California exclusive of its conflict of law principles.

6.8 Venue. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of San Joaquin or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

6.9 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be severed and the remaining provisions of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

6.10 Attorneys' Fees. In the event of any legal action arising out of or relating to any breach hereof, the Party prevailing in any such action shall be entitled to recover against the non-prevailing Party all reasonable attorneys' fees, expert fees, and costs reasonably incurred by the prevailing Party in such action.

6.11 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the Parties hereto. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in this Agreement or under law.

6.12 City Approval. Whenever City approval or consent is requested, the written approval or consent of the City Manager of the City shall constitute the approval or consent of the City,

without further authorization required from the City Council unless, in the opinion of the City Attorney, such approval or consent requires City Council approval as provided herein or under the law. The City hereby authorizes the City Manager to deliver such approvals or consents as are required or permitted by this Agreement on behalf of the City, subject to the concurrence of the City Attorney. If the City Attorney determines that City Council approval is required, the City Manager shall agendaize the matter for the next regularly-scheduled meeting of the City

Council subject to the noticing provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.)

6.13 Discretion Retained By City. The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City to approve, deny, or conditionally approve any permit, entitlement, or approval required for the construction, creation, erection, establishment, or modification of the Improvements.

6.14 Time for Performance. Unless otherwise specified, any reference herein to "days" shall mean calendar days. If the time for performance ends on a Saturday, Sunday, City holiday, or when the City is not open for business, the time for performance shall be extended to the next business day.

6.15 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

6.16 Counterparts. This Agreement may be executed in counterparts and multiple originals.

6.17 Recitals Incorporated. The Recitals set forth above are incorporated into this Agreement and made a part hereof, and except where specifically stated, do not constitute covenants or representations of either Party.

6.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

6.19 Effectiveness of Agreement. This Agreement shall only become effective on the Effective Date.

6.20 Interpretation. Each Party has reviewed this Agreement and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting Party. This Agreement shall be construed as if each of the Parties drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this Agreement.

6.21 Signator's Warranty. Each Party warrants to the other Party that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement.

6.22 Stockton Business License. The BBBY Business entity established to administer this Agreement will register for Stockton Business License and remit tax based on gross receipts

from sales made by such entity. City acknowledges that gross receipts of such entity for purposes of determining Business License tax under Municipal Code Chapter 5.08 are limited to only sales to customers with a Stockton address.

6.23 Entire Agreement and Amendments. This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the Parties to this Agreement.

WHEREFORE, the Parties have executed this Agreement on the date first noted above.

ATTEST:

CITY OF STOCKTON:

BONNIE PAIGE
CITY CLERK

KURT WILSON
CITY MANAGER

BY _____

BY _____

DATE _____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BUSINESS:
BED BATH & BEYOND INC.

BY _____
CITY ATTORNEY

BY _____

NAME _____

DATE _____

RETAIL DEVELOPMENT WEST, LLC

BY _____

NAME _____

DATE _____